



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 15-026

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]

1. Statutory Authority

The proposed rule largely repeats the statutory language from the directive to create this rule, without providing additional governance. Section 452.137 (4), Stats., requires the board to establish, by rule, the “form and terms” of a cooperative agreement, and outlines minimum subjects that are to be addressed in such an agreement. It appears under this provision that the Legislature may have intended for the board to provide substantive guidance for the “form and terms” of a cooperative agreement that builds upon the basic framework given in the statute, rather than simply reproducing the statutory language. Accordingly, the board should consider revising the proposed rule to provide more detailed instructions for the format that must be used, and the content that must be included, in a cooperative agreement.

2. Form, Style and Placement in Administrative Code

a. Rather than creating a new chapter in the administrative code for the single section created by the proposed rule, consider creating the provision for the cooperative agreement form in another chapter, such as ch. REEB 16, among other approved forms. Single-section chapters should be avoided, and similar material should be grouped together. [s. 1.02 (3) (intro.), Manual.]

b. Definitions could be created for the specific terms used in the proposed rule, such as “licensed broker”, “out-of-state broker”, and “out-of-state salesperson”, by referencing the statutory definitions given for those terms in ss. 452.01 (5n) and (5p), and 452.137 (1) (b), Stats. [ss. 1.01 (7) (d), and 1.02 (3) (b), Manual.]

c. In s. REEB 13.01 (1) (b), the notation “, Stats.” should be inserted after the reference to “s. 452.05 (1) (b)”. [s. 1.07 (2) (Table), Manual.]

d. In that same section, s. REEB 13.01 (1) (b), a Note should be created that indicates how the form that is referenced in the rule may be obtained. [s. 1.09 (3), Manual.] Compare, for example, s. REEB 16.03 (2) (Note), in the current rules. Alternatively, the text of the form could be provided in the rule itself, either in a rule section or an appendix.

e. In s. REEB 13.01 (2), the paragraphs following the subsection’s introductory material should form a complete sentence with the introduction. [s. 1.03 (3), Manual.] For example, the subsection could be revised as follows:

(1) In the introductory material, the word “do” could replace the phrase “contain at least”.

(2) In par. (a), the sentence could begin with the word “Establish”.

(3) In par. (b), the sentence could begin with the word “Establish”.

f. In s. REEB 13.01 (2) (c), the notation “, Stats.” should be inserted after the reference to “s. 452.13 (1) (a)”. [s. 1.07 (2) (Table), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. In the rule summary’s listing of statutory authority, a specific reference to sub. “(4) (a)” should be inserted in the citation to s. 452.137, Stats.

b. In the rule summary’s explanation of agency authority, the narrative should reference each specific statute section that is being described. For example, the first paragraph could begin with the phrase, “Under s. 15.08 (5) (b), Stats., each”, and the second paragraph could begin with the phrase, “Under s. 452.137 (4) (a), Stats., the”.

c. In s. REEB 13.01, the proposed rule follows the language of only sub. (4) of s. 452.137, Stats., but that section contains other requirements that apply to the parties to a cooperative agreement, which could be referenced in the rule. For example, the rule could require, among the terms of a cooperative agreement, that the parties must agree to comply with the provisions of s. 452.137 (2) and (3), Stats.

d. In s. REEB 13.01 (1) (b), a citation to “s. 452.137 (4) (a)” should replace the citation to “s. 452.05 (1) (b)”, in order to reference the board’s specific authority to approve a form for use in a cooperative agreement.

e. In s. REEB 13.01 (2) (c), the board could, if desired, insert the phrase “under s. 452.13, Stats.” after the phrase “trust account maintained by the licensed broker”, in order to specifically reference the statute governing the management of trust accounts.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In the title for ch. REEB 13, consider revising the title to more specifically indicate the subject matter of the chapter. For example, the phrase “Out-of-State Brokers” could replace the

phrase “Cooperative Agreement”, or the phrase “with Out-of-State Brokers” could be inserted after the phrase “Cooperative Agreement”.

b. In s. REEB 13.01 (1), unless the board intends to create a structure that allows subunits to be added in the future, the subsection does not need to be divided into subunits. For example, the introduction and subunits could be combined into the following phrase:

A cooperative agreement between a licensed broker and an out-of-state broker shall be made in writing using a form approved by the board under s. 452.137 (4) (a), Stats.

c. In s. REEB 13.01 (1) (b), if the board does not revise the subunit structure that is given in the proposed rule for sub. (1), as described in the previous comment, the phrase “On a” should replace the word “A” at the beginning of the sentence, and the word “under” should replace the word “pursuant to”.

d. In s. REEB 13.01 (2) (intro.), the phrase “terms of the” should be deleted.